EXHIBIT 7

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In Re: CREDIT SUISSE-AOL

SECURITIES LITIGATION

Master File No. 1:02 cv12146

This Document Relates To:

ALL ACTIONS

VIDEOTAPED

DEPOSITION OF SCOTT D. HAKALA

New York, New York

Monday, August 11, 2008

Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

JOB NO. 18034

August 11, 2008
9:35 a.m.

Videotaped deposition of SCOTT D. HAKALA, held at the offices of DAVIS, POLK & WARDWELL, 450 Lexington Avenue, New York, New York, pursuant to Notice, before Francis X. Frederick, a Certified Shorthand Reporter, Registered Merit Reporter and Notary Public of the States of New York and New Jersey.

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PROCEEDINGS

THE VIDEOGRAPHER: This is the start of the tape labeled number one of the videotaped deposition of Scott Hakala in the matter in re. Credit Suisse AOL Securities Litigation. This deposition is being held at 450 Lexington Avenue, New York, New York, on August 11, 2008 at approximately 9:35 a.m. My name is Michael Pineiro from TSG Reporting, Inc. And I am the legal video specialist. The court reporter is Francis Frederick in association with TSG Reporting.

Would counsel please introduce yourselves.

MR. GESSER: Avi Gesser, Davis Polk & Wardwell, for the Credit Suisse defendants.

MS. OLIVER: Melissa Oliver, Davis Polk.

MR. HALFTECK: Guy Halfteck, Davis Polk.

MR. SHAPIRO: Jonathan Shapiro, Wilmer Hale, for defendant, Frank

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Quarttrone.

MR. HALL: Donny Hall, Kaplan Fox & Kilsheimer on behalf of the class and the witness.

MS. RODON: Melinda Rodon, Kaplan Fox & Kilsheimer.

* * *

S C O T T D. H A K A L A , called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. GESSER:

Q. Dr. Hakala, we've met before but just on the record I'm Avi Gesser and I'm going to be taking your deposition today. You've been deposed many times before?

A. Yes.

Q. Okay. I'm not going to go over the ground rules. I am going to just ask you listen to my question, answer the question that I ask. We've got a lot of ground to cover today and so if we're going to get through everything I really need you to listen

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to my question and just answer the question that I've asked.

Do you understand?

A. Yes.

Q. Okay. Did you -- in the course of your work for this case, did you calculate the total loss that plaintiffs have suffered as a result of their trading in AOL?

A. No. Not that I know of. I may have had some calculations but I don't think I ever did.

Q. Okay. And so you calculated the loss -- as part of your latest expert report you calculated the loss that you believe to be attributable to Credit Suisse First Boston's conduct; is that correct?

A. Yes.

Q. Okay. Do you know what that total loss is?

A. Well, I know in the general class case if you use a percentage method that the total losses for the period that we're talking about probably are in excess of $40 billion and that's based on both the work I did in the

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AOL Time-Warner Securities Litigation as well as what claims and opt-outs have now established.

Q. And that's for which period that we're talking about?

A. I'm talking about from the time of the merger till the end. Now, that may be high because that may include -- that may include the losses suffered of Time-Warner shareholders who exchanged their shares for AOL Time-Warner so I'm not sure if that would qualify. But that's -- I think the losses in total are probably in the order of 45 to $50 billion.

Q. But have you done that calculation?

A. That's the losses attributable to fraud. The total losses of the class were closer to like 80 billion or something like that.

Q. And how do you know that number?

A. Because I did a lot of work in the AOL Time-Warner Securities Litigation.

Q. Okay. And so there's a piece

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that's attributable to regular market forces.

A. Yes.

Q. There's a piece attributable to AOL fraud.

A. Yes.

Q. And there's a piece attributable to, in your view, to Credit Suisse, the fraud committed by Credit Suisse; is that correct?

A. Yes. And the piece committed by Credit Suisse and AOL overlap to some extent. But not entirely.

Q. Okay. And when you say not entirely, in what area do they not overlap?

A. In the class action, the layoff issue was not alleged. And the issue of knowledge that AOL was not going to meet its numbers was not explicitly alleged, although, really, that was picked up in a different way in the accounting fraud.

Q. And so does that mean that with respect to layoffs that Credit Suisse had superior information than AOL did?

A. No.

MR. HALL: Objection.

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A. That -- that there are different claims in different types of allegations of information in the different cases. So some of the losses that are being identified here may not necessarily be identified in the AOL class and vice versa.

Q. But if Credit -- if Credit Suisse First Boston has liability to plaintiffs for not disclosing the layoffs at AOL, wouldn't, in your view, AOL have the same liability?

MR. HALL: Objection.

A. It depends. I never looked at that issue.

Q. And those -- and those -- those damages were never part of the AOL case as far as you know.

A. As far as I know, yes.

They weren't explicitly. Implicitly they were. I think some of the layoffs to the extent that they revealed the relative truth that AOL was not doing so as well, they did become part of the claim but not in the context of failure to disclose the intent to lay off. They became part of the

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claim in the sense that the layoffs exposed the fact that AOL was not doing as previously represented.

So they didn't come in as damages but under a different set of grounds.

Q. And was there a piece that was attributable to AOL's auditors?

MR. HALL: Objection.

Q. Of plaintiff's total losses?

A. The auditors were not separated out because the auditor claim was overlapping. There is no such thing as nonoverlapping claims when you're dealing with auditors. The auditors are really in the position of essentially facilitating and making public statements that affirm and maintain the fraud committed by the committee -- company. So in our view the auditors were on the hook for a portion of the damages caused by AOL's fraud. In other words, they had separate liability for the same damages.

Q. And to a large extent that's also true for the claims here; is that right? That Credit Suisse would have overlapping

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liability.

MR. HALL: Objection.

A. To some extent that's true. And to some extent that may not be true.

Q. And did you determine whether or not the plaintiffs in this case have already been compensated for their losses in connection with AOL?

A. Yes, I did.

Q. And what did you determine?

A. I determined that the compensation realized from the settlement so far, both Justice Department and from the -- from the settlement in the class action case represent such small compensation that there's effectively no offset.

Q. And do you know what the total amount of compensation that the plaintiffs in this case have already received by virtue of those settlements?

A. Not exactly. But generally as a rule of thumb of their eligible claims the plaintiffs -- most of the plaintiffs, not opt-outs, would have realized about 5 percent,

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maybe 4 percent of their total losses attributable to all causes of action.

Q. And do you know what the gross number is?

MR. HALL: Objection.

A. Well, the settlement in the class case was 2.65 billion less legal fees and expenses. I'm trying to remember what the Justice Department fair funds agreement was but I think it was a much smaller figure.

MR. GESSER: I apologize. Counsel for one of co-defendants was trying to dial in so I think we're trying to do that. This is Laura Martin's counsel; is that right? Do you have any objection to them dialing in?

MR. HALL: No. Not at this point.

MR. GESSER: I'm sorry. This is news to me as well.

MR. HALL: No, it's fine.

(Pause on the record.)

A. Just to complete the answer it should be emphasized that there are opt-out cases and there have been significant

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settlements in those, so some of those plaintiffs would have realized a larger percentage settlement than the class case. But, nevertheless, no one received, as far as I know, more than 25, 30 percent of their losses from all claims.

Q. And some of those opt-outs would be plaintiffs in this case?

A. They would.

MR. HALL: Objection.

Q. And so -- sorry. The total number that you attributed to CFSB, what number is that?

A. Well, if you add up all the claims based on my report I think it's what? -- about 4 billion so I'm saying that the losses that could have been avoided if CSFB had not made certain statements or had disclosed what it had known in a timely manner as alleged would have reduced matter the total losses realized by investors by about 4 billion.

Most of that is part of the 50 billion in approximate losses suffered by the shareholders. In the class case.

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Q. And you divide that into two categories as I understand it. You said losses that would have been avoided had CSFB not made certain statements and had they made certain disclosures.

A. Right.

Q. Assuming the law is that plaintiffs can't be compensated for omissions. Let's just assume that to be the case. That a failure to disclose does not result in a recoverable losses and that the only losses that are recoverable are those that are based on inflation caused by false statements.

A. Commissions as opposed to omissions.

Q. Correct. Assuming that's the case. How would that $4 billion number change?

MR. HALL: Objection.

A. Well, I don't know. I'd have to think about that. I don't know how you'd interpret the accounting claims which are separated out as a -- if you treat those as an omission those would go away. If you treat

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layoff claims as an omission those would go away and I don't know exactly what percentage of damages those represent.

The other claims I think clearly are commission. In other words, making statements about the earnings or earnings prospectuses and degree of confidence of AOL meeting certain expectations. Those appear to be clearly commissions as opposed to omissions.

Q. Okay. And are those commissions that in your view caused inflation in AOL stock price?

MR. HALL: Objection.

A. Yes.

Q. Okay. And in terms of your damage analysis did you factor in that inflation that you allege is caused or was your damage analysis based on the disclosure damages analysis?

MR. HALL: Objection.

A. In this particular case the particular commission was actually explicitly modeled based on the timing of certain AOL

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Time-Warner analyst reports issued by CSFB or Credit Suisse and what effect would have happened had what I assumed to be the truthful information, the alternative statement that should have been made instead of the commission. In other words, when they made certain statements about confidence in the company meeting certain EBITDA and revenue targets, price targets, et cetera, I assumed that those were commissions and if they had issued what I read in the e-mails, I tried to make a reasonable estimate, albeit conservative, of what the price effect would have been had they issued those alternative reports.

Q. Okay. But just to get to my question which was if instead the correct measure of damages were that instead of issuing the reports that they issued they should have said nothing, not affirmatively said anything but should have said nothing, did you model that damage?

MR. HALL: Objection.

A. No. No.

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Q. Do you know what that damage -- sitting here today, do you have a sense of what that damage would be?

MR. HALL: Objection.

A. Yes. I think that they contributed to some inflation in January and February by making affirmative statements in '01 and then again after 9/11 in September and had they not issued reports reinforcing their position that probably -- well, that would have allowed the stock to fall more than it did. I believe at least the February 1, '01 report had a positive effect in and of itself and that the September 19th report in combination with another analyst report had a positive effect in and of itself.

Q. So either of those two dates that you mentioned where you think there was a positive effect, are either of those dates what you would describe as clean days?

A. One is clean and one is confounded but I put a weight of 50 percent on the confounded day.

Q. And the date that's clean is which

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date?

A. The February -- I need my report but early February of '01 there was a report one of one where there was a statement and sort of a -- this is why we think the stock should go up, why we think it's been undervalued and why it's beaten down.

Q. And in your view that had a statistically significant effect on AOL's stock price?

A. Yes.

Q. With what confidence level?

A. I don't know without looking at the report.

Q. Okay. Mark as Exhibit 1 your report.

(Hakala Exhibit 1, Expert Report of Scott D. Hakala, marked for identification as of this date.)

BY MR. GESSER:

Q. So, Dr. Hakala, which day is it that's --

A. It's February 5th, 2001.

Q. And who issued that report?

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A. CSFB. Credit Suisse First Boston.

Q. Do you know who the author of that report was?

A. Not offhand. It was a joint report emphasizing the statements of Kiggens and Martin.

Q. Was it authored by Kiggen or Martin?

A. I don't know if it was authored by them specifically so much as it was saying that this is what Kiggens and Martin are saying and here's our opinion. I'd have to look at the report to see who authored it.

Q. Do you know if the report was repeating information that Kiggen and Martin had previously issued in a report or if there was new information about their views?

A. It was both. It was both.

Q. Okay. And what was the -- in your count what was the inflation that was caused by that?

A. Cause date, 2.91 percent increase in the stock price which in a one tail test would be at over the 97.5 percent confidence.

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About a 98 percent confidence level on a one tail test.

Q. So when you say that Credit Suisse caused plaintiffs' losses could you just explain to me what you mean by -- what's the cause of their losses?

A. Well, the cause of the losses is that Credit Suisse was aware of certain information about declining advertising revenue trends and revenue that they did not disclose. And as analysts by, in a sense, largely agreeing with the company's guidance and reaffirming it to help to prop up the stock price when they knew that that was not true and as an analyst when you know that that's not true you have a duty according to the then AIMR and now the CFA Institute to apprise your investors and the investment community of that fact.

Additionally, later on they were aware that there were layoffs in AOL of moderate severity which they did not disclose while issuing reports. And they were aware of accounting improprieties in AOL Time-Warner

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which they did not disclose in their reports.

So the cause is really that by not telling the market what they knew and not being truthful about what they knew they helped to prop up and, in fact, increase the price of AOL Time-Warner stock over what would have been the case had AOL Time-Warner spoken truthfully or at least not spoken at all.

Q. But there's a -- you would agree there's a huge difference between the damages that would be caused by had they -- in your view had they spoken truthfully and had they not spoken at all.

MR. HALL: Objection.

A. There would be a very significant. Huge is kind of -- I don't know. But certainly the damages would be cut substantially between acts of commission and omission if you define them the way I assume you're defining them.

Q. What if other analysts were also aware of these -- what I'll describe as these three factors that you've considered; declining advertising trends, layoffs,

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accounting irregularities?

MR. HALL: Objection.

A. Well, if the they made those statements that would have -- and a few did -- that would have separately reduced the amount of damages caused by the overall fraud occurring within AOL Time-Warner. To the extent that they did not disclose those things either, that does not in my mind absolve CFSB of its duty as an analyst to do that.

Q. So could you have five -- assuming there were five other analysts at other firms who knew the exact same information that Credit Suisse did at the time regarding the declining advertising trends, the layoffs, the accounting irregularities, and did not disclose them in the same way that you believe that Credit Suisse didn't disclose that information, they could have overlapping liability for the exact same damages to plaintiffs in your view?

MR. HALL: Objection.

A. Not the exact same because the way I did the analyst, each analyst is

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noncumulative. We're looking at the incremental effect. But certainly to the extent if two or three of the other analysts had made those statements, even if CFSB had not, that would have in my mind dampened or at least reduced the damages attributable to CFSB. So they are at least partially overlapping. But analysts are not -- unless all the analyst uniformly make the same truthful statements, incrementally each individual analyst contributes to the fraud to an extent that is not overlapping. How much that is is hard to say. It's kind of a hypothetical.

Q. Okay. But if -- forget what was said. If there was omission, the same omission errors or fraud committed by other analysts, I'm just trying to get an understanding of how these damages get calculated, if there was the same omissions by other analysts --

A. Or commissions.

Q. Or commissions. Well, let's say both. Let's say that they were making

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positive statements but they were aware of the declining advertising trends, they were aware of the layoffs, they were aware of the accounting irregularities, and they didn't disclose them.

MR. HALL: Objection.

A. Yes.

Q. They would be liable for the same damages?

MR. HALL: Objection.

A. No. Different damages in the case of some. To the extent that some of the analysts, let's say Blodget or -- Henry Blodget or some of the others made statements and caused positive impact on the stock price of AOL Time-Warner that would be separate and apart from CSFB. So each analyst affects the mix of information and in fact the effort I made in my analysis of CSFB incrementally separate and apart from other analysts. And so to that extent they are to a large extent nonoverlapping at least on the commission component.

Now, on the omission component,

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there may be some overlap.

Q. In fact there could be complete overlap.

MR. HALL: Objection.

A. Not likely. Not likely. Because each incremental analyst who raises the same concerns has an incremental effect. If one analyst raises a concern the market may react some and ironically, in fact, we see that with the layoff on August 13th and 14th. The first published report actually has less effect than the second. So it is not clear that there is a complete overlap. There rarely is.

Q. But I guess -- and maybe we're talking past each other but what I'm saying is if there are five analysts who all know this information and none of them disclose it --

A. Um-hum, yes.

Q. -- by your calculation, aren't they also liable for the damages that you attribute to the failure to disclose that information? Can't they all be equally liable for the same total amount of damages?

MR. HALL: Objection.

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A. No, no. Each one I would treat differently based on when they issued reports and what the impact of their reports were. So, in fact, they would not necessarily be overlapping. It would depend on timing, amount, what discovery indicates, what the pleadings say. But they would not be overlapping. I can say that it is likely that if there were -- if it was proven there were five different analysts who were all committing the same fraud it's alleged CSFB committed that, taking that into account might compress the damages attributable to CSFB to some extent but they would not be overlapping. They would be separate. Because the way I did the analysts was incremental to a single analyst altering the mix of information.

Q. Okay. And so what would be the factors that you would look at to determine which analyst caused which damage?

MR. HALL: Objection.

A. I would have to know what they knew and should have said but didn't say.

Q. Let's assume -- let's assume it's

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all the same thing right here as we discussed the three factors we've been talking about.

A. Then I'd have to look at for each analyst when they issued reports what the report said, what impact those reports had, what incremental effect each analyst had. To the extent that one analyst propped up the stock price at a different time from CSFB that would be a different inflation from CSFB and would be nonoverlapping.

Now, there's a little bit of an interaction in the math that goes on but nevertheless you would get generally a large extent of nonoverlapping damages from the mix of information. I mean, another way to put this is suppose five different analysts all came out and said we don't think CSFB is -- we don't think AOL Time-Warner can meet its revenues and EBITDA targets because we're seeing substantial declines in advertising. The stock price reaction to that negatively would have been far greater than what I'm assuming or what I'm assuming for CSFB in this case. The stock of AOL Time-Warner might have

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fallen has much as 10 percent or more on those five different analysts all making that statement at the same time.

Similarly, if in July or June if different analysts all said we're hearing rumors that AOL Time-Warner has had some internal investigations and they've been involved in accounting improprieties involving Purchase Pro and other entities, each one incrementally would have increased the total magnitude of the effect much more than a single report by a single analyst.

Q. Okay. I understand that. But now assume that none of the analysts spoke at any time until the corrective disclosure, okay?

A. Okay.

Q. So we're all on the same -- all the analysts are in the same boat. Right? Of the 4 billion that you talked about how would you allocate that as between those five analysts?

MR. HALL: Objection.

A. I wouldn't.

Q. They would each be liable for the

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full amount?

A. Well, no. Because as I pointed out, each of them is liable for a different amount unique to its circumstances and the total amount of damages that would have been avoided had all five spoken truthfully would be much larger than the 4 billion we're talking about in this case.

So I don't think you can do it that way. The other thing is that when we're looking at a single defendant, we're assuming that somebody else out there who's not been specifically identified is also liable for the fraud and that somehow you can claim an offset for that. I don't know that to be true. I have to take what all the other analysts have done as given and say what's the incremental effect of CSFB by itself issuing its reports. I think that's the proper way for us to look at the issue.

Q. So let's take these one at a time. Let's start with the advertising.

A. Sure.

Q. At the beginning of the class

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period -- you believe that the beginning of the class period CSFB had knowledge of a weakening ad market; is that correct?

A. Yes.

Q. Was this knowledge that CSFB had, was this non-public information?

MR. HALL: Objection.

A. Some probably was unique to what CSFB through its own methods had in turn obtained. Others -- component of it was a knowledge generally. The real issue is not weakening ad market but whether the weakening of the ad market that was known was substantially less than what CSFB was the actual fact.

In other words, the market knew that the advertising industry and advertising was weakening. That was known.

Q. Okay.

A. The question here was what impact would have then on AOL Time-Warner's ability to meet its earnings and revenue guidance in the coming year.

Q. Okay. And what part of that

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knowledge of Credit Suisse was non-public?

MR. HALL: Objection.

A. I think most of it. I don't think the public knew that Credit Suisse had determined internally that given the weakening ad market and given the guidance that AOL Time-Warner was not capable of meeting its numbers. There were some other analysts who expressed those concerns but they were - as the opposing expert Professor Stoltz has noted - in the minority, not the majority.

In other words, I can't say that the information was unique to CSFB but I can say that CSFB had some incremental information and knowledge that was distinguishable from what the market believed.

Q. Let's try and break this down. There is data and then there are opinions about that data, okay? In terms of the raw data about the advertising market, was there anything that Credit Suisse knew that was not public?

MR. HALL: Objection.

A. Based on my e-mails, yes.

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Q. What is it that they knew that was not public?

A. My understanding is that Laura Martin knew that the advertising market in the media industry was deteriorating more rapidly than expected and had continued to deteriorate.

Q. And how did she know that?

A. Because of her own contacts within the industry. Because of her own investigations in the industry.

Q. And that was non-public information about AOL?

MR. HALL: Objection.

A. Non-public information or information not generally known about the industry. And then the connection to AOL was also non-public.

Q. On what basis do you make that conclusion?

A. Based on reading the e-mails and based on reading the comments that she made internally.

Q. Okay. Let's get that e-mail out.

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(Hakala Exhibit 2, document bearing production numbers CS-AOL_0004761 through CS-AOL_0004762, marked for identification as of this date.)

BY MR. GESSER:

Q. Have you seen this e-mail before?

A. Yes.

Q. Is this the e-mail that you're referring to when we were speaking a moment ago about the decline in the advertising market?

A. This is one of them.

Q. Okay. Have you read Laura Martin's deposition transcript?

A. At some point I may have. I don't remember. No, I'm sure I did.

Q. Okay.

A. I did at some point.

Q. What about this e-mail suggests to you that Laura Martin had access to non-public information about the advertising market?

A. She was talking about scattered pricing at ABC and CBS. I don't know that the

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market knew that generally.

Q. Do you know that the market didn't know that?

A. I don't know.

Q. You're making an assumption about that, aren't you?

MR. HALL: Objection.

A. What I'm really assuming is that the position that CSFB's making as an analyst about what the market is and their bullish ad stance, as she describes it, is contrafactual with what she knows internally. Whether she --

Q. Let's stick with the question I asked. What about this e-mail tells you that Laura Martin has access to non-public information about the ad market? You said to me that it's because she's talking about ABC. And my question to you is what makes you think that that information was not public?

A. Because I didn't see information that suggested that that was public.

Q. Okay. But --

A. Or that the public had the ability

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to understand that information, absorb, it and, relate it to AOL Time-Warner.

Q. But that's just an assumption that you're making, right? I mean, on what basis do you make --

A. But I'm a damages expert. I'm not a liability expert. I'm entitled to make that assumption, aren't I?

Q. Okay. But what's the basis for your assumption?

MR. HALL: Objection. The

A. Just what I talked about. The fact that she's talking about specific pricing trends for advertising in specific media entities that she's apparently gathering as a media analyst. That's not something that public would generally know.

Q. Did you do anything to test to see whether that information was available to the public at that time?

MR. HALL: Objection.

A. Yes.

Q. What did you do?

A. I did research on what other

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analysts were saying. What news articles were saying about AOL Time-Warner, et cetera.

Q. Okay. And you could not find any information about this in the public at that time, about ABC's -- about the scattered price market for ABC?

MR. HALL: Objection.

A. No. What I told you earlier is that the market was aware that there was weakening of the national marketing.

Q. That's not what I'm asking you. I'm asking you --

MR. HALL: Objection. Let him answer the question.

MR. GESSER: He's not answering the question.

Q. My question was did you determine whether or not the specific information about the scatter market was or was not public?

MR. HALL: Objection.

A. No. I didn't -- I didn't find any evidence to tell me one way or the other. All I knew was that there was some evidence that the ad market was weakening but that the

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evidence was mixed and some people suggested it was not weakening. And as Laura Martin suggests her, they were putting out a bullish ad stance at the same time they internally were aware that the market was weakening.

So in the mix of information CSFB was presenting information to the market, information contrary to what they knew to be true. Which is really what I was concerned with.

Q. Would other media analysts have access to this information?

MR. HALL: Objection.

A. Some would. Some would not. Depends on the quality of their investigation and experience. Laura Martin, as I understood it, was particularly diligent and knowledgeable in this area but there were probably a handful of other analysts that maybe could have obtained this information or might have known this information.

Q. In fact, wouldn't this be something that all advertising and media analysts would be looking for?

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MR. HALL: Objection.

A. They might. They might not. It depends on how diligent and capable they are.

Q. Okay. So Laura -- so Laura Martin is aware of this information and yet it doesn't get disclosed, correct? Is that your --

A. It not only doesn't get disclosed. It doesn't get disclosed in the context of what the implications of that are for AOL Time-Warner which is I think the issue in this case.

Q. If you read down in the third paragraph of that e-mail it says, "Personally I'm okay with our bullish stance until our earnings estimates go negative."

Do you see that?

A. Yes.

Q. What is it that suggests to you about this e-mail that Ms. Martin did not agree with the research reports that were coming out from Credit Suisse?

MR. HALL: Objection.

A. I don't know. I think there's

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other e-mails that may show that.

Q. But there's nothing about this e-mail.

A. Well, later on she says she is lowering her EBITDA forecasts for Viacom, Disney, and Time-Warner's 2 percent but she I think -- I'm not sure this is the one where she makes it clear that she didn't think the company can make its EBITDA targets. I think that's a different one.

Q. In this e-mail is Ms. Martin talking about traditional advertising or on-line advertising?

MR. HALL: Objection.

A. My assumption is both but more likely traditional.

Q. Have you read her deposition transcript discussing this e-mail?

A. At some point, yes.

Q. Do you remember what her view was about this e-mail?

A. Not without reviewing it, no.

Q. When she refers to the scatter market does that refer to on-line or does that

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refer to traditional?

A. That's traditional.

Q. Okay.

A. Or I shouldn't say traditional. But traditional media outlets.

Q. Not on-line.

A. Right.

Q. So what is it that you believe with respect to this e-mail was the nondisclosure or omission that Credit Suisse committed?

MR. HALL: Objection.

A. Just that the national ad market had been weakening over the last five weeks, much more than previously; that that would have ordinarily, if I was reading that, caused me to further discount the revenue and EBITDA guidance of AOL; and that, therefore, as a result CSFB should have lowered its revenue and EBITDA guidance and price target for AOL.

But really I think the assumptions I made about what are the facts I assumed based on the pleadings and complaint are really set forth in my report in paragraph 5.

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Q. Okay. So let's turn to that.
A. So I didn't make a specific assumption about a specific e-mail. I mean if you want to argue liability, that's fine. I'm just not the right expert.
Q. The assumptions that you made are in paragraph --
A. 5.
Q. All right.
A. Specifically at the beginning of the class period is 5A.
Q. Okay. The Kiggen and Martin were aware that there was a substantial weakening in the advertising marketing that would affect AOL negatively?
A. Yes.
Q. And that AOL would be unable to achieve the earnings and revenue guidance published by CSFB.
A. Yes.
Q. In particular Martin knew that the national ad market is much weaker than five weeks ago.
A. Yes.

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Q. Additionally, defendants knew that the price target of AOL should be materially lower than the $80 price target published in their January 12th and 16 reports.
A. Yes.
Q. Okay.
A. And there's more.
Q. And the more is?
A. They continued to issue on February 1st a reaffirmation of their earnings and price target or set a price target of 75 despite knowledge that AOL could not achieve those revenue and earnings targets. The resulting price target was set too high.
Q. And when you say that they knew AOL couldn't achieve their price targets, you don't mean they literally knew that, right? You mean that that was their opinion.
MR. HALL: Objection.
A. You know, yeah. I think you could say that that was their opinion or based on the information about the market that they did not feel that AOL's guidance was well founded or was achievable. That's probably a fair

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statement.
Q. And so based on that information, did you believe that $80 price target was unreasonable?
MR. HALL: Objection.
A. Yeah.
Q. Unsupportable?
MR. HALL: Objection.
A. Yeah. Based on their internal opinions, sure. But that's more -- they believed internally that it was so.
Q. And when you say --
A. I mean, some of the e-mails suggest they knew that was not a supportable price target.
Q. And when you say "they" who is they.
A. At least Laura Martin and probably to some extent Mr. Kiggens.
Q. Well, let's take that separately. Laura Martin, what was her status on the AOL coverage team for Credit Suisse?
A. She was considered a foremost -- one of the primary or premier media analysts

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and Kiggen was known as the Internet analyst. So when AOL Time-Warner merged they in a sense were viewed as merging the two analysts. Although I believe Kiggen's name appeared before her on the reports.
Q. He was the lead analyst?
MR. HALL: Objection.
A. He was probably the lead analyst but I think it was viewed in the market as co-analyst reports.
Q. What in your view made that -- how do you know what the market view their reports as being?
A. Based on what I saw on the news when I did searches on Kiggen and Martin.
Q. And what did you find?
A. That Martin was viewed as an analyst covering the stocks I think in May of 2001. In fact, she chaired some kind of meeting among media CEOs; that she had had contact with Pittman. So the fact that her name was on the report was viewed as significant because she was viewed as a senior analyst.

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Q. But what made you think that she was viewed as a co-lead analyst?

MR. HALL: Objection.

A. I don't remember. It was just my sense that when two analysts are covering two companies that are a marriage of equals and they continue to sign the report, that's generally viewed as a co-analyst report.

Q. You had read their depositions on that issue?

A. Yes.

Q. And what do both Kiggen and Martin say about that in their depositions?

A. They might have suggested that at some point Kiggen was the lead but with Martin still signing the report, most investors would have naturally assumed that her input on the media side would have played a very important role.

Q. Do you know how many times Laura Martin was mentioned in connection with the AOL coverage by the press during the class period?

A. No.

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Q. Do you know how many times Mr. Kiggen was mentioned in connection with AOL coverage in the press during the class period?

A. Only in a couple.

Q. You know that he was only mentioned a couple times?

A. I did a word search on his name and AOL and I only found a few hits.

Q. And Laura Martin?

A. Same. I think later on there was a lot more when Laura Martin was -- depending on when she was terminated there was a lot more press on this issue.

Q. On her coverage of AOL.

A. Yeah. Yeah, there was quite a bit of a discussion about her former coverage of AOL in October/November of 2001.

Q. How many press stories do you think there were about that?

A. I don't know without looking at my file.

Q. More than one?

A. More than one.

Q. What would have happened if Credit

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Suisse had issued a $60 price target instead of an $80 price target which I think was what your view was the correct -- withdraw that.

What was -- in your view what was the correct price target for -- Credit Suisse could have provided for AOL in light of the information that they had?

MR. HALL: Objection.

A. I didn't form that view explicitly. I had that view from my prior work that it was below 60. If one knew that the ad market was weakening it should have been below 60. But I did not form that nor was that necessarily what was important. What was important to me was that the view that CSFB internally acknowledges it should have.

Q. And what was that?

A. $60 or less.

Q. And what would had happened if AOL had -- if CSFB had issued a 60 price target for AOL?

A. Dropped it from 75 or 80 I think that would have been a least a 2 to 3 percent on the stock by itself just from looking at

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the other -- what happens when in a clean event another analyst lowers the price target that significantly generally the stock reaction was at least 2 and a half to 3 percent or more.

(Hakala Exhibit 3, document bearing production numbers CS-AOL_0003086 through CS-AOL_0003096, marked for identification as of this date.)

BY MR. GESSER:

Q. Dr. Hakala, have you seen this document before?

A. No.

Q. Okay. It's a media daily. Do you know what that is?

A. No.

Q. It's a Credit Suisse analyst report. Do you see the date on it? It's Tuesday, January 16th, 2001?

A. Okay.

Q. Do you see in the bottom right-hand -- left-hand corner there is what I would describe as a mini report on AOL?

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A. Yes.
Q. Do you see that Laura Martin is on top and Kiggen is beneath her name?
A. Yes.
Q. Do you see that this has a price target of AOL of $60?
A. Yes.
Q. If you look at your report, what was the return for AOL on January 16th, 2001?
A. Negative.
Q. Negative what?
A. Negative .54 percent.
Q. Is that statistically significant?
A. No.
Q. At the 90 percent level is that statistically significant?
A. No. The primary news on that day was AOL subscriber increase looking at my report.
Q. What was the range of price targets for AOL during this time period?
A. It was fairly wide. I'd have to go back and look but it was generally anywhere from the 40s or 50s all the way up to maybe a

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hundred, 90 or a hundred.
Q. Who was the top-ranked analyst in entertainment at that time?
MR. HALL: Objection.
A. I don't remember.
Q. Was it Jessica Reed Cohen?
A. It might have been Cohen.
Q. Where was she?
A. Cohen was Merrill Lynch.
Q. And do you know what Merrill Lynch's price target was at that time?
A. No.
Q. If I told you it was 60 would that surprise you?
MR. HALL: Objection.
A. No.
Q. In a co-coverage -- sorry.
Returning to that last question, so the market was aware of a large range of price targets for AOL.
A. Yes, they were.
Q. And so what makes you think that if Credit Suisse had lowered its price target from 80 to 60 that would have had a dramatic

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effect on AOL's stock price?
A. I didn't say dramatic.
Q. Statistically significant?
A. Enough to be statistically significant. It would have been modest. Two to 3 percent is a modest effect. It would have been a suggestion that another analyst, especially an analyst who was viewed as pro company, a sell side analyst was substantially lowering their estimate of the prospects for the company's price in the future and that would have been important material information.
Q. What was AOL trading at at that point?
A. Which day?
Q. Let's take January 16th, 2001.
A. $46.70.
Q. So $60 was still 33 percent above what it was trading at?
A. Yes.
Q. Why don't you think the stock -- AOL stock reacted in a statistically significant negative way on January 16th,

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2001?
A. Because I didn't find evidence that this report was widely disseminated and because the primary news on that day was that they had increased the amount of subscribers in AOL which was positive.
Q. How many times during the class period did AOL announce that it increased its number of subscribers?
A. A number.
Q. A large number? Five times?
A. At least five.
Q. Maybe ten?
A. I don't know about ten.
Q. Maybe 20?
A. I don't know about 20. Couldn't have been 20.
Q. Could not have been 20?
A. I don't think so.
Q. And so you're saying that -- well, let me see if I understand.
Are you saying that this media daily you don't think was disseminated widely enough to affect AOL's stock price?

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A. I didn't see it. In the formal -- the formal published, what I'd call first call price target of CSFB was not $60. It was $80. And $75 in this time period. That's what the e-mails are showing.

Q. That's not what I'm asking.

A. So I don't know how -- whether this got disseminated or not.

Q. Okay. Let's assume for the purposes of today's discussion that it was disseminated in the same way that the research reports were disseminated. Institutional investors, widely distributed received this information. CSFB customers received it.

MR. HALL: Objection.

Q. Why would this not have had a negative effect?

A. Because CSFB's formal price target remained in the 80 to $75 range. So people would have been confused by this.

Q. And so if people were confused by this you think it may not have had an effect on the stock price?

A. It would have had a more muted

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effect, especially if the company had reiterated its price target.

Q. What company?

A. CSFB.

Q. Does the fact that Laura Martin's name is on top and Jamie Kiggen's name was below do you think the market would interpret anything by that?

A. I don't know.

Q. Is it possible that people reading that would realize that Laura Martin had a $60 price target and Jamie Kiggen had an $80 price target?

MR. HALL: Objection.

A. Not necessarily.

Q. That's not what I asked. I asked isn't it possible that people would be confused.

MR. HALL: Objection.

A. I mean, we can speculate about it but essentially this is a report by two analysts who are trying to cover the stock. I'm not sure they would attribute it to one or the other. Under CSF -- under -- under CFA

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guidelines it wouldn't matter whose name is up front. Both of them should subscribe to the opinion or their names should not be on the report.

Q. Where does the CFA guidelines say that?

A. Standards of Professional Practice.

Q. Say what?

A. That an individual can't sign a report or can't have their name associated with a report to which they do not subscribe with the opinions.

Q. Is Jamie Kiggen a CSA analyst?

A. CFA. But Laura Martin is and it doesn't matter. It's the Standards of Practice in the industry. You don't issue a report where one of the persons listed with the report doesn't hold the view of the report. That's considered unethical.

Q. Really? Is that your practice as well with your expert reports?

A. Absolutely.

MR. HALL: Objection.

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Q. So ever single thing in your expert report is something that you believe and that your counsel believes as well?

MR. HALL: Objection.

A. No, no, no. Counsel didn't issue my report. My report is issued by me. But if I have a valuation report, for example, and three people sign it, or work on it, if anyone dissents from some aspect of the report I'm required under USPAP to report that.

Q. Okay. And so in every co-coverage situation you believe that every -- you believe that all the analysts believe absolutely everything that's in the reports.

MR. HALL: Objection.

A. I can't say in that extreme way but every material difference of opinion should be diclosed or one of the analysts should not put their name on the report.

Q. Have you ever seen that? Have you ever seen a dissenting opinion in an analyst report?

MR. HALL: Objection.

A. Yeah, I have but it's very rare

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because it's --

Q. What's the name of that company?

A. I can't think of it. I saw it in one case where there was a split in analysts in the company. They were both covering the same stock.

Q. Do you remember what stock that was?

A. No.

Q. How many instances can you think of that happening?

A. One that I know of and maybe two or three others.

Q. How many co-coverage instances can you remember that happening?

MR. HALL: Objection.

A. Surprisingly frequent especially when you have large conglomerates with multiple stocks so that they cover the universe of two different analysts in the same company.

Q. Okay. Maybe 50 instances of co-coverage?

A. More than that.

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Q. Okay. A hundred instances of co-coverage?

A. I don't know.

Q. So in a hundred instances of co-coverage over the last ten years you know of maybe one instance where there was a dissenting opinion.

MR. HALL: Objection.

A. It's not even co-coverage. When you issue an analyst report sometimes you list four different analysts who are on that group on that report.

Q. Okay.

A. If any one of those analysts doesn't agree with the report they should drop their name or note the dissent.

Q. So you think that --

A. That's ethically required.

Q. That's not what I'm asking. You think that if -- in all those situations all the analysts agreed with everything in each of those reports.

MR. HALL: Objection.

A. I can't say absolutely but in

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material aspects if they thought any part of the report was materially false or misleading they are not supposed to agree to the report and the report should go out noting that. Ethically they're supposed to. And if they don't it's one of -- it's frankly one of the sore spots within now the CFA Institute that that policy has not been enforced. But it has also been known in the investment management industry that you cannot put out a report on that report with a person on that report not subscribing to material opinions in that report.

Q. And so you believe that the market thinks that every analyst on every report agrees with everything material in that report.

MR. HALL: Objection.

A. Not in that extreme level but materially in terms of the general gist of the price target, the general views of target, yes.

Q. Is that a realistic expectation for the market?

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MR. HALL: Objection.

A. Depends on who you are. I think some institutional investors are a little jaded about that, especially given what we now know. But the simple fact of the matter is a report is not supposed to go out unless it represents the collective opinion of the authors and of the firm.

Q. Okay. And if I were to tell you that it's very common for analysts working in co-coverage situations to have different views of price target, different views of EBITDA numbers, different views of earnings per share, and yet they reach a consensus in doing so, would that surprise you?

MR. HALL: Objection.

A. That would not surprise me that they might reach a consensus but then it would have to be a consensus that they both can subscribe to and is within the range of price targets that they both are comfortable with, not an issue like this where one is saying I believe the price target should be much lower.

Q. Okay. But do you -- have you

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reviewed Laura Martin's deposition transcript on that issue?

A. I have in the past. Not recently.

Q. Anything in her deposition transcript suggest that she didn't believe the numbers that went out under her name in the report?

A. I'm not going to read minds. I think that's an issue for the judge and the jury. Not for me. I have my own view of that.

Q. And what is your view of that?

MR. HALL: Objection.

A. My view is that I think internally she knew that the numbers for AOL Time-Warner were inflated and she was trying to get CSFB to knock them down.

Q. But that's not what she said.

A. In her e-mails.

Q. Okay. So your assumption is that she committed perjury during her deposition?

MR. HALL: Objection.

A. I'm not going to draw that conclusion one way or the other other than to

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suggest that sometimes years after the fact we give answers that are self-serving. Fact witnesses do especially when they're defendants. But beyond that it's neither here nor there. Her e-mails speak for themselves.

Q. Okay. Let's go back to the e-mail I showed you before. Her e-mail says, "Personally I'm okay with our bullish stance until my earnings estimates go negative."

A. Okay.

Q. Does that suggest to you that she didn't believe the earnings for Credit Suisse -- didn't believe the estimates?

MR. HALL: Objection.

A. I don't know. From this e-mail alone I don't know but from other e-mails I do know. I think there's other e-mails where she's clearly concerned that AOL cannot meet its targets even with the price increase. AOL Time-Warner cannot meet its target for EBITDA even if it raises its ad -- it's AOL subscription rates.

Q. What was AOL's target for EBITDA for the first quarter of 2001?

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A. I don't think it was the first quarter we focused on. It was for the full year.

Q. And what was that?

A. 40 billion.

No, no. That was revenue. What was the EBITDA?

EBITDA was 11 billion.

(Pause on the record.)

(Hakala Exhibit 4, document bearing production numbers CS-AOL_0004840 through CS-AOL_0004865, marked for identification as of this date.)

BY MR. GESSER:

Q. We're at Hakala 4?

Dr. Hakala, have you seen this before?

A. I think so.

Q. What do you think this is?

A. This is an e-mail about a draft report that she's writing which appears to have some extensive detail on AOL Time-Warner. And she's here saying a price target of $60.

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Q. So this is her internal -- this is her internal view?

A. This is my understanding, yeah.

Q. Turn to page 14.

A. (Witness complies.)

Q. What's her EBITDA number for the year?

A. The EBITDA number here is 11 billion.

Q. It's above AOL's guidance number, isn't it?

A. In this draft, yes.

Q. All right. What should Laura Martin -- what should Jamie Kiggen have done if he disagreed with Ms. Martin on her views about the price target?

MR. HALL: Objection.

A. Ethically? Realistically?

Q. Insure view.

A. Disclosed that there was a difference of opinion.

Q. And, again, we've discussed that that very rarely happens; isn't that right?

MR. HALL: Objection.

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A. Yeah, it very rarely happens for ethical reasons.

Q. What do you think the market would have done with that kind of disclosure?

A. They would have started discounting the stock price and it would have taken that into account.

Q. You don't think the market would have been confused?

A. Oh, sure it would have represented uncertainty. But it certainly would have indicated that even CSFB was conflicted as to whether AOL could meet its targets. Given Martin's reputation she would have put a lot of weight on the fact that she was concerned that they couldn't meet the targets.

Q. You said they couldn't meet their targets.

A. For earnings and for EBITDA and for revenue.

Q. Okay. About I just showed you that her internal EBITDA number was 11 billion.

MR. HALL: Objection.

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A. But I'm assuming that that's inconsistent with other e-mails where she knew that.

Q. I just asked you did this show -- this is an internal e-mail in which she provides in her draft report that they have an $11 billion EBITDA and you're just ignoring that?

MR. HALL: Objection.

A. No. I'm saying that just because she put that there doesn't necessarily mean she believes that it was an achievable number. Or that that number didn't have some substantial risk.

Q. Well, what makes you think that?

A. Other e-mails.

MR. HALL: Objection.

A. Other information pled by counsel. Again, you know, you're trying to argue liability and facts with a damages expert. It's kind of silly.

Q. Well, you've made a whole bunch of assumptions and I'm just trying to test to see how well your assumptions hold up and whether

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they're driven by a result oriented analysis or whether you've actually done any objective analysis to determine whether your assumptions make sense.

MR. HALL: Objection.

A. I've done an internal analysis to determine whether my assumptions make sense but I also as all damages experts have taken as given the allegations in the complaint.

Q. I mean, this is an e-mail that you're just simply discounting.

MR. HALL: Objection.

A. No, I'm not discounting it. I'm saying that Laura Martin knowingly -- look, Laura Martin is a defendant in this case because she knowingly let reports go out that counsel alleges in certain e-mails she knew had earnings targets and price targets in it that couldn't be met.

Q. Although I just showed you an e-mail that says she's fine with the bullish stance.

MR. HALL: Objection.

A. Well, again, you point to one

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piece of paper and ignore another. That's not my issue. And -- I mean, you're trying to try your case on fact and liability with a damages expert and I'm just not going to let you go there.

Q. Okay. What if Mr. Kiggen had just taken Laura Martin's name off the report?

MR. HALL: Objection.

A. Probably would have been a negative signal. I don't know how negative.

Q. Could you test for that?

MR. HALL: Objection.

A. No.

Q. Did you test it?

A. No.

Q. So there's no way to know what the market would have done in that situation.

A. It would have raised some concerns but I don't know for certain, that's true.

Q. And had Laura Martin's name come off the report would the report still be factually misleading?

MR. HALL: Objection.

Q. In your view?

A. Potentially, yeah.
Q. Why?
A. Other persons in the analyst group were of the opinion that there was no way AOL Time-Warner could meet the $11 billion target given the weakening ad market.
Q. Who?
A. Laura Martin. Other analysts.
Q. Her name is not on the report.
A. It doesn't matter. It's going out on CSFB.
Q. Wait. So Jamie Kiggen has to make sure that everybody at CSFB agrees with a report even if their name isn't on it?
MR. HALL: Objection.
A. He has to acknowledge that there is a significant concern about these particular issues and that the concern is that these targets are not achievable, that there's weakening of the national ad market that make it unlikely or difficult for AOL to meet these numbers.
Q. Even if he disagrees with that?
MR. HALL: Objection.

A. Well, I don't know. I mean, you know, I'm not an -- I'm not going to testify to liability or facts. I have to assume what I have to assume as an expert.
Q. Okay. So I'm asking you -- I'm asking you would you assume that in that situation there would be a failure to disclose because -- even if Laura Martin's name was not on the report that Kiggen had an objection to disclose her views?
MR. HALL: Objection.
A. Assuming Kiggen didn't also hold those views privately and admit to them but took a different position for reasons of investment banking and politics which is another issue here as I understand it.
Q. Okay. I'm not --
A. I mean, you're assuming that Kiggens held to these beliefs and believed them and I'm not necessarily granting that assumption.
Q. Okay. So you believe that there's evidence that Jamie Kiggen didn't believe his reports?

A. That's -- I believe -- that's my understanding is that CSFB as a group and even Kiggen and people working with Kiggen were aware of the fact that these revenue and earnings targets were not achievable.
Q. Okay. And what's your basis for that view?
MR. HALL: Objection.
A. What's pled in the complaint.
Q. Did you do anything to test that?
A. Well, I have read depositions. I've read e-mails. But that's not my role.
Q. But any -- I understand that.
A. I mean that's not my role and you're trying to make it my role. It's not.
Q. But you are saying that there are damages as a result of failing to disclose things so I'm asking you what was it that was failed -- that was not disclosed. And you're telling me that Kiggen's true views weren't disclosed and I'm asking you where do those true views come from.
MR. HALL: Objection.
A. I didn't say that. I said that

the allegations in the compliant are that CSFB, either Martin or Kiggens, were fully aware of the fact that the price target should be lower, that the revenue target that was put up by AOL Time-Warner was not achievable and the EBITDA target was not achievable and should be lowered.
Q. Okay. And I'm asking did you --
A. And that the national ad market was weakening and was continuing to weaken such that there was a need to lower their targets and nevertheless they did not do so.
Q. And I'm asking you on what basis do you believe that that was Jamie Kiggen's view?
MR. HALL: Objection.
A. I said I didn't form that one way or the other. It was irrelevant whether it was or was not.
Q. Why is that irrelevant?
MR. HALL: Objection.
A. Because whether it was Martin's view or Kiggen's view they're both on the report.

S. HAKALA

Q. Okay. But we were now in this hypothetical where Laura Martin's name does not appear on the report.

A. Okay.

Q. And then I'm asking -- now I'm asking you is there still something in the report that was not disclosed that you feel should have been disclosed?

MR. HALL: Objection.

A. Sure.

Q. And what's that?

A. That the price target was too high and couldn't be supported by a reasonable valuation.

Q. Okay. And my question is what makes you think that Jamie Kiggen did not believe that the price target was supportable?

MR. HALL: Objection.

A. Just from the e-mails that I saw.

Q. Can you -- do you remember any particular e-mail?

A. No. And that wasn't the focus of my analysis. I'm a damage expert. I'm not a fact expert and a liability expert. And

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that's not a proper role for me as an expert.

Q. But your damages and your analysis is based on assumptions that you're making so I'm just testing those assumptions. If you're telling me that those are assumptions that aren't necessary for your report, then we can move on.

MR. HALL: Objection.

A. Well, you're now posing a contrafactual hypothetical which is that Laura Martin was not on the report. That's the first problem. The second problem is you're assuming that plaintiffs have not alleged that CSFB and Kiggens and at least some of the people besides Kiggens and Martin associated with that report did not know that there were problems with AOL and that they weren't putting up reports that were -- how can I say it? -- intended to please AOL for investment banking reasons. That's the allegation. I think there's plenty of evidence of that and that's not a surprising thing to see analysts do.

Q. What was the Salomon Brothers's

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price target for AOL at this time?

MR. HALL: Objection.

A. I don't know.

Q. Would it surprise you if I told you it was 115?

MR. HALL: Objection.

A. No, it wouldn't at all.

Q. So that's 35 -- 45? -- $35 higher than Credit Suisse's price target at this time?

A. Apparently, yes.

Q. Okay. Does that necessarily mean that someone at Salomon Brothers was committing fraud?

MR. HALL: Objection.

A. I don't know. It's possible. But I don't know.

Q. That's not my question. Does it necessarily mean that someone at Salomon Smith Barney was committing fraud?

MR. HALL: Objection.

A. I don't know. No.

Q. No, it doesn't necessarily mean that?

S. HAKALA

A. You know, it could. It could not.

Q. That's not -- does it necessarily mean that someone at Salomon Brothers was committing fraud?

MR. HALL: Objection.

A. It's incomplete. There's more to it than that. Given what you know about the market and given what a competent analyst should know, a $115 price target in this time period would raise a lot of eyebrows.

Q. Okay. How many analysts had higher price targets than Credit Suisse at this time?

A. A number.

Q. Goldman Sachs?

MR. HALL: Objection.

A. I don't know.

Q. Morgan Stanley?

MR. HALL: Objection.

A. I don't know.

Q. How about Bernstein Research?

MR. HALL: Objection.

A. I don't know.

Q. Did they have an investment

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banking business?

MR. HALL: Objection.

A. I don't now. I don't think so.

Q. Okay. So if a research analyst firm that did not have investment banking business had a higher price target than Credit Suisse at this time, what would that tell you?

MR. HALL: Objection.

A. That that analyst was overly optimistic or not as well informed as Laura Martin.

Q. Okay. So --

A. I mean, given what Laura -- we're talking about what Bernstein thought and I don't think that's relevant. The issue that's relevant here is Laura Martin is very, very thorough in her knowledge of the media industry and media segment and ad trends and she's saying that based on what she's seeing in the market which we have to give weight to, this company can't meet its numbers.

Q. But She knows more than Salomon Smith Barney, she knows more than Goldman Sachs, she knows more than all these

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other analysts with higher price targets.

MR. HALL: Objection.

A. She may or may not. I don't know. I didn't make that determination.

Q. But it's possible all those analysts were -- is it possible that all those analysts reached those price targets having done a reasonable analysis?

MR. HALL: Objection.

A. I don't know. I don't think so.

Q. But you're not an analyst, are you?

A. Yeah, I am. I'm a CFA. I've done analyst work.

Q. Okay.

A. I don't publish it like a securities analyst in an investment banking firm but I do analyst work all the time.

Q. Do you have any special expertise in media companies or on-line companies?

A. Yeah. I've valued hundreds of them over the last 16 years.

Q. Okay. And so you feel you're capable of making an investment as to whether

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or not an $80 price target was reasonable at this time?

MR. HALL: Objection.

A. That wasn't the focus of what I did in this case.

Q. That's not my question.

A. But if I did and was in that position and looking at all the same information, yeah.

Q. And you would say that an $80 price target at this time was unreasonable?

MR. HALL: Objection.

A. Based on what I know from some other information, yeah.

Q. Okay. And therefore anybody -- anybody with a higher than $80 price target at that time would have been behaving unreasonably in your opinion?

MR. HALL: Objection.

A. They would have been taking positions that I don't think were sustainable. Given what I know. Both on the on-line subscriber side as well as in the traditional media side.

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Q. And so if Credit Suisse had gone with Laura Martin's numbers do you know how -- where she would be as against consensus?

MR. HALL: Objection.

A. She would be lower than average. On price target. On EBITDA she would be lower than average on consensus.

Q. Significantly lower?

MR. HALL: Objection.

A. Yeah. But the consensus was like 10.6, 10.7, with some up at 11, some down as low as 10. She would have pulled the consensus down by herself. And both -- she would have pulled the consensus price target and the consensus EBITDA target down especially if you do what we call the narrower survey of the major investment banks that provided regular consistent coverage of which there are about five.

Q. And if she would have published a dissent what would that have looked like?

MR. HALL: Objection.

A. It's not an issue of dissent. It's an issue of in the report it would have

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been noted that there was a difference of opinion within CSFB and a number of members of CSFB were of serious doubt that the company was --

Q. When you say a number of members, other than Laura Martin who else was that?

MR. HALL: Objection.

A. I don't know without looking at the discovery. My understanding it wasn't just exclusively Laura Martin opinion. It may have even been Mr. Kiggen's.

Q. But don't know that.

MR. HALL: Objection.

A. Other than what I've read, no. But I'm not going to form that opinion.

Q. Okay. So based on you -- just sitting here today, can you think of anyone else other than Credit Suisse -- at Credit Suisse other than Laura Martin who would have had to have put a dissent or a different opinion than what was in the research report?

MR. HALL: Objection.

Q. In order for it to be accurate in your view.

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A. Not offhand, no. And I didn't make that determination.

Q. So in order for the reports not to have been misleading in your view what would they have had to say?

MR. HALL: Objection.

A. They would have said that among the analysts who are assigned coverage of this particular stock of which there are two, that there was a significant difference of opinion as to price target and as to the likelihood of the company meeting its expectations.

Q. And is there any way to test how the market would react to that?

A. You can look at what happens when two different analysts issue a report, one positive, one negative, and see what impact that is. And I've done that in this case. Generally they'll give weight to the negative and not the positive.

Q. Generally they. Who's they?

A. Investors.

Q. Is there any scientific way to actually measure that, though?

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A. Yeah. If you look at days when they're multiple analyst reports and one is a reiterating or a an upgrade and one is negative, downgrade, generally would carry weight. Statistically I think it's pretty well known. In fact, in the survey that I've done here a number of cases we have that.

Q. But wouldn't that just be the definition of confounded? If one analyst on the report is saying something positive and another analyst is saying something negative isn't that exactly what confounding is?

A. Well, confounding mean that there's multiple pieces of information. That doesn't mean that you can't isolate from the confounding information which one has the influence.

If one says something positive and one says something negative and the stock reacts negatively we certainly know from the confounding information that the negative had a greater impact than the positive. If you have two pieces of information and they go in the opposite direction and the stock moves in

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one direction and not the other, then we have a pretty good idea which one was the primary impact. Confounding information doesn't prevent you from drawing inferences.

Q. Have you ever seen anybody do that analysis?

A. Yeah.

Q. For dissenting opinions in analysts' reports?

A. Not for dissenting opinions but for multiple opinions that dissent from each other, yes.

Q. Okay. Who's done that?

A. I've done that a number of times.

Q. Who else has done that?

A. I don't know. I've seen other studies of analyst reports that have looked at negative versus positive reports and noted that negative reports tend to carry more weight than positive reports.

Q. Have you seen any academic literature that supports that you could actually isolate a negative report from positive reports that are released on the same

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day?

A. No. What it generally says is that if you look at a day when there's a positive and a negative report the negative report tends to dominate the positive report and cause a negative impact.

Q. But is there any academic support for measuring what that impact would be?

A. For the negative report by itself or for the effect of the two together?

Q. Either.

A. For the two together it's easy.

Q. For the effect of the negative report itself.

A. Yeah. For the negative report itself all you can say is that the effect must have been at least as great or greater than the negative reaction.

Q. Okay. But you --

A. But you're applying deductive reasoning and natural logic to that.

Q. But you haven't done that here. You haven't tried to determine what would have happened had Laura Martin's report -- instead

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of Credit Suisse issuing Laura Martin's report if Credit Suisse issued the report it had with Laura Martin.

A. No, no. We have examples here where there are positive or neutral or reiterations against a negative report and the negative report is statistically significant. Some of the examples in my report are --

Q. No, no. That's --

A. Well, that is what you're asking.

Q. No, it's not. What I'm asking is did you test to see what would have happened in this case had CSFB issued the report it did along with information about Laura Martin's views in that report?

A. The only way to do that is to do something equivalent and that is what happens when there is a negative report and a positive report issued on the same day --

Q. But did you do that here?

A. Yeah.

Q. For what day?

A. I can't remember but there's a

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number of days.

Q. No, no. It's not that you believe --

A. Even February 20th, 2002 when the Lehman downgrade occurs, there's positive reports on that day and the following days and the stock still goes negative.

Q. My question is your analysis as I understand it is you take a look at what would have happened if CSFB had issued Laura Martin's report; is that correct?

A. No. I look at what the impact would have been if the allegations of the plaintiffs are true. And given what my understanding is that there's a factual foundation for the allegations of the plaintiff. In assessing the damages you assume a disclosure by Credit Suisse of a report that instead of the report that was issued it was Laura Martin's views that were disclosed; is that right?

MR. HALL: Objection.

A. Not necessarily.

Q. Okay. What is it that you

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examine?

A. That a report was issued with a substantially lower price target and with a substantially -- substantial amount of caution saying we don't think given the current ad environment that AOL is going to be able to meet its revenue or EBITDA targets. And, therefore, the EBITDA target should be 6 billion.

Q. And my question --

A. And then as you go through the year it should be lower and lower and lower.

Q. So my question is you didn't test to see what would have happened if Credit Suisse had its $80 price target but also indicated that there was a $60 price target had Laura Martin's views been the one to prevail and Laura Martin had a lower EBITDA number. That is not the test that you did; is that correct?

A. I didn't look at a test of a joint report nor do I think you can do that.

Q. Okay.

A. The issue is really -- if you're

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going to talk about that then I think the marketing would generally probably given Martin more weight than Kiggens. A dissenting report like that would have been a pretty interesting event.

Q. Except it wasn't on January 6th, 2001.

MR. HALL: Objection.

A. Or January 12th. I don't know. You know, all I can say is if there had been two reports, one by a media analyst and one by an Internet analyst, and the media analyst said I don't think this company's going to make it and its price target needs to be much lower, I have a very good indication from what I've read in the academic literature and in this case the market would have given more weight to the -- Laura -- what you're calling the Laura Martin opinion than the Kiggens opinion.

Q. Wouldn't the market view her opinion being more related to Time-Warner and his opinion being more related to the American On-Line division?

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MR. HALL: Objection.

A. Possibly but possibly not.

Q. What's her expertise?

A. She was a media analyst. But in media analyst she would be understanding the advertising on-line segment or new media segment as well.

Q. Is that what she said in her deposition?

A. I don't know.

MR. GESSER: Let's take a break.

THE VIDEOGRAPHER: The time is 11:04. This is the end of the tape labeled number one. We are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:16. This is the start of the tape labeled number two. We're back on the record.

BY MR. GESSER:

Q. Dr. Hakala, how many advertising related corrective disclosures did you determine there were during the class period?

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A. From the company or from other individuals?

Q. In total.

A. In total I don't remember without adding them up but there were probably at least 20.

Q. Okay. Could there have been at least 49?

A. It's possible. Some of them were small though. There's about 20 that were significant.

Q. And how many days do you believe that CSFB inflated AOL's stock price?

MR. HALL: Objection.

A. Well, to the extent that it made certain statements and then continued to reiterate certain statements that are alleged to be false and misleading it would be all the days from the beginning of the class period around January 12th all the way to some time in March and April of 2002 on the advertising claims.

On the -- on the claims relating to failure to disclose internal accounting

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improprieties, that would be out till July 25th of 2002.

Q. Okay. And -- but with respect to the advertising, the omission as you see it, is this knowledge that Ms. Martin had about the declining advertising market and what its likely effect would be on AOL; is that correct?

MR. HALL: Objection.

A. No.

Q. Okay. What is the omission?

A. The omission is that CSFB knew that there was declining advertising trends, that the ad market was weakening, and that in light of the weakening of the ad market that AOL was unlikely to meet its earnings target, revenue targets, but particularly unlikely to meet its EBITDA targets for 2001 and then later for 2002.

Q. And when was the last of the curative disclosures that took place?

A. In terms of inability to meet EBITDA targets and declining ad revenue I took the analysis out to March and April of 2002.

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Q. Okay. So it took 14 months for that information to be cured in the market; is that right?

A. To be fully --

MR. HALL: Objection.

A. -- fully cured. But the first really significant curative disclosures really begin around July 18th of 2001.

Q. But in total it took dozens of disclosures to cure that; is that right?

MR. HALL: Objection.

A. Incrementally, yes.

Q. And during this time period, other analysts, they were becoming aware of this issue or how is it that -- what was the role of other analysts in exposing this alleged omission?

A. Well, the role of certain analysts was that certain analysts were raising these issues and making similar statements and as such they were partially corrective because they were revealing a portion of the relative truth at various points in time.

But what I did to handle that was

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I put a weight on each time an analyst or the company made affirmative statements that I believed were inflationary in nature.

Q. And what was that weight?

A. About .134.

Q. That was the same weight for each one?

A. For each one, yes. Except for when CSFB spoke.

Q. So you treated those all as equivalent?

A. Yes.

Q. Okay. Do you believe that they all would be equivalent or is that just some kind of shorthand that was helpful for your analysis?

A. I think they were helpful. I'm not sure that they're all entirely equivalent. There are some alternatives that a jury or a judge may consider. But I think in light of the facts of the case and the circumstances it was the best assumption of the alternatives I considered.

Q. Many of these analysts who were

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curing the omission from Credit Suisse, these were the same analysts who had higher price targets than Credit Suisse at the beginning of the class period?

MR. HALL: Objection.

A. Some did. Many did not.

Q. Okay. And some maintained price targets that were higher than Credit Suisse even as they were making these curative disclosures; is that right?

A. At least on the advertising on the EBITDA side, that's correct. Frankly, I was more concerned with revenue and EBITDA than with price targets, but, yes.

Q. How many corrective disclosures did you find in the In Re. AOL case; do you remember?

MR. HALL: Objection.

A. No.

Q. Do you remember how many of those corrective disclosures related to advertising revenue?

MR. HALL: Objection.

A. I didn't focus on that issue in

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that context. I focused on disclosures which revealed the revenue truth regarding advertising that was concealed by the fraud which was accounting. So the answer is no. I think the earliest corrective disclosures were October of 2000. And some of the primary corrective disclosures may have been in the spring and I think the July 18, 19, 2001 were viewed as partially corrective.

Q. So did you view -- with respect to advertising you view this as a fraud that CSFB committed that AOL may not necessarily have committed, is that right?

MR. HALL: Objection.

A. They may have committed. But it's a different claim and it's a different case. AOL committed it by in a sense manufacturing revenue and misstating earnings and revenue in its AOL division specifically with regard to advertising. Whereas here, we're talking about CSFB putting out analyst reports at a time where they knew, had reason to know that the guidance given by AOL was not true.

Q. Okay. And I guess my question is

but does that mean that AOL knew that its guidance wasn't true for the same reason or not necessarily?
A. I didn't investigate that. AOL, as you're aware, at least the part I worked on, settled while discovery was ongoing. So I never really got that far.
Q. But if Laura -- I guess my question is if Laura Martin figured out that AOL couldn't meet its numbers, is it possible that AOL did not figure that out?
MR. HALL: Objection.
A. No. I don't really think so. I think AOL knew their numbers were cooked.
Q. For the same reason.
A. For the same reason and other reasons. I think they knew their numbers were cooked for the same reasons Laura Martin knew and then beyond what Laura Martin could know. Or CSFB could know. In other words, the magnitude of the fraud in AOL was much greater than what CSFB was aware of. I have no doubt of that.
Q. Analysts -- you said that you have

some familiarity with analyst coverage; is that correct?
A. Yes.
Q. Do analysts often hear rumors about the companies they cover?
A. Yes.
Q. Especially with a large company like AOL; is that right?
A. Yes.
Q. Did you read Mr. Kiggen's deposition transcript with respect to what his experience was with rumors?
A. I don't remember it but I'm sure I read it.
Q. Okay. And what is an analyst in your view supposed to do with rumors they receive?
MR. HALL: Objection.
A. They should investigate them or validate them. If they're coming from credible insiders they should be given weight as though they're inside information.
Q. Should they go ahead and publish the rumors they receive?

MR. HALL: Objection.
A. I haven't formed an opinion on that. I think generally if there are such rumors they should at least acknowledge that there are such rumors. And that if they are at all potentially material that they can't issue a report without acknowledging these risks. Now, usually what they might say is there is a rumor of this. We haven't been able to confirm it or we have obtained from a reliable source. But they should at least put it out there.
And I have to say it's surprising how often analysts do that.
Q. Really? Have you seen a lot of instances of that?
A. Oh, yeah.
Q. Can you think of an instance in the last year an analyst has done that?
MR. HALL: Objection.
A. Not without going back. I see it all the time.
Q. You see it all the time?
A. Yeah.

Q. Are you aware that the SEC has stepped up enforcement against people -- analysts who are publishing rumors?
MR. HALL: Objection.
A. Not if they're valid sources of information, no. What the SEC is enforcing is fair disclosure violations. Reg FD. That's different. And I'm aware in a couple of cases I'm working on that kind of circumstance.
Q. And how is that different?
A. That's different where a company insider is leaking to an analyst that they're going to miss earnings or have a particularly good quarter ahead of time and the analyst puts that out privately to his brokerage group.
Q. That's not what I'm talking about. I'm talking about. I'm talking about analysts who are publishing rumors that they've heard who are being -- who are facing regulatory action from the SEC for publishing unsubstantiated rumors.
MR. HALL: Objection.
A. I've never heard of that. And

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I've never heard of it saying as long as they properly couch it as the support they have I've also understood they have the same rights as any other person reporting on a stock to comment on what's moving the stock and what's out there.

I'd be shocked if the SEC's prosecuting that. Given that I'm now occasionally interacting with the SEC I've never heard of that. Most of the SEC stuff I'm seeing them enforcing is like insider trading. Violations of Reg FD. It's a very different concept.

Q. And what if the analyst isn't able to confirm the rumor one way or the other?

MR. HALL: Objection.

A. Well, if you're not able to confirm -- I don't know. I mean, if there's a resume and it has some validity and it's weighing on a stock price I think it's perfectly acceptable to say that there is a rumor out there saying this and it appears to have been affecting the stock price. We haven't been able to confirm it. That's a

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truthful statement. It's a material statement to investors. I have seen that in numerous reports. Lots of reports I've seen where analysts do that.

Q. Okay. But you can't think of any off the top of your head?

A. No. I haven't done a survey of that but I know it happens done all the time. In fact, it's a basis I have in my event studies for identifying what was driving a stock in a given time period and whether there was leakage.

Q. Leakage of what?

A. Relevant truth. Because a lot of times the rumors are really persons within the company leaking out information concerning potential improprieties, frauds, the company's not doing well, et cetera. It's surprising how often that happens.

Q. Let's focus on the layoffs. In your report you conclude that Credit Suisse was aware of layoffs that were going to happen at AOL; is that right? On July 10th, 2001?

A. I assume that based on what the

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information is that counsel has and based upon my review of the information that CSFB knew of layoffs that were planned of moderate severity or grade in AOL.

Q. Were you asked to assume that or did you reach that assumption on your own?

MR. HALL: Objection.

A. Well, I reached the assumption on my own but it was part of the allegations in the complaint. So it was not so much asked as if I'm doing damages and that's an allegation in the complaint then I would perform that analysis based on those assumptions.

Q. Okay. So let's take a look at I think the e-mail that is the basis for your assumption.

MR. GESSER: Okay. We're marking this Hakala 5. And then -- and Hakala 6.

(Hakala Exhibit 5, document bearing production number CS-AOL_0020112, marked for identification as of this date.)

(Hakala Exhibit 6, document

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bearing production number CS-AOL_0020110, marked for identification as of this date.)

BY MR. GESSER:

Q. Have you seen these e-mails before?

A. Yes.

Q. And so Mr. Kiggen receives these two e-mails regarding layoffs at AOL on July 10th and then July 11th, 2001. And based on these e-mails you believe that Mr. Kiggen should have disclosed this information?

MR. HALL: Objection.

A. At some point. The next time the report was issued.

Q. And what should he have said?

MR. HALL: Objection.

A. My understanding from the complaint is he should have said he is aware of layoffs of medium severity at AOL.

Q. I'm sorry. Your understanding of the complaint?

A. What the complaint alleges. I'm not an expert on the law. So I'm saying that

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the next time the report was issued or at some point they have a duty to disclose to the public that they're aware that there are layoffs of medium severity that the company is not disclosing.

Q. I'm sorry. Let me see if I understand what you're saying now.

You're saying that the damages that you calculated are based on a failure to disclose certain information but you're taking no position on what that information was that should have been disclosed?

MR. HALL: Objection.

A. Other than what's set forth in the complaint.

Q. So you're assuming whatever is alleged in the complaint as -- should have been disclosed to be true.

A. Yes.

MR. HALL: Objection.

Q. And you're not making any independent assessment of that.

A. No.

MR. HALL: Objection.

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A. How can I? I would be stepping in the role of the judge and the jury. That's not the role of an expert on damages.

Q. Okay. So the assumptions that you make in your report are assumptions that you have been asked to make or you on your own have decided to make in order to issue your report?

MR. HALL: Objection.

A. It's a combination of both. It's a conversation with counsel as to what should I assume that they will prove. What are the facts they believe they will prove at trial. And then based on that I do an analysis.

Q. Okay. And so were you asked to assume that these layoffs were the layoffs that actually were announced by AOL on August 13th?

MR. HALL: Objection.

A. They weren't announced by AOL on August 13th.

Q. That were disclosed to the market on August 13th?

A. They were leaked to the market on

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August 13th. They weren't disclosed to the market.

Q. Okay. And is that an assumption that you have made or you were asked to make or is that a conclusion you have reached?

A. Both of the two former and not the later.

Q. I'm sorry. Just for the sake of clarity?

A. It's an assumption I made. It was an assumption I was asked to make. It is not a conclusion I formed because I didn't believe that it was my role to step into the role of the finder of fact.

Q. Did you do anything to test whether that assumption was reasonable?

MR. HALL: Objection.

A. I talked to counsel at length. I looked at the e-mails. I looked at the other information. But beyond that, no.

Q. So you're assuming based on the complaint that Mr. Kiggen should have disclosed -- I'm sorry. And I cut you off. What?

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A. That AOL was planning layoffs of moderate severity and that this was an indication that there was weakness in AOL.

Q. Would that have been responsible for him to disclose that?

MR. HALL: Objection.

A. If he had a credible source, yeah.

Q. Well, does he have a credible source?

MR. HALL: Objection.

A. Apparently.

Q. Why do you say that?

MR. HALL: Objection.

A. Just based on the e-mail from Antonio Lorenzo it appears he has a good source within AOL who's telling him what's going on.

Q. And so would he in his report have to say I have -- I've heard from a source or would he just say AOL its planning layoffs?

MR. HALL: Objection.

A. I would probably assume that he would be as specific as possible.

Q. Okay.

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A. Based on a source of information it is our understanding that AOL's planning layoffs of medium severity and that they will not be announced publicly. This could be interpreted as a sign that AOL is struggling or is not performing as well as expected and might adversely affect the results or projections of AOL.

Q. After the merger were layoffs anticipated?

MR. HALL: Objection.

A. Yes. Some were.

Q. Okay.

A. But not in this area.

Q. What area?

A. AOL advertising.

Q. How do you know the layoffs were in AOL advertising?

A. They were in AOL and AOL was supposed to be growing. The layoffs that were anticipated were supposed to be more of cost savings at a corporate overhead overlapping roles and not within divisions.

Q. Sorry. What about his e-mails

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let's you know anything about where these layoffs are taking place?

MR. HALL: Objection.

A. My assumption is that these are at AOL, not AOL Time-Warner or the parent.

Q. What makes you -- what's the basis of your assumption?

A. What actually happened.

Q. What actually happened when?

A. In terms of what layoffs AOL was planning in this time period.

Q. That's not my question. I'm asking you from Kiggen's point of view reading these e-mails what would he know about the layoffs?

MR. HALL: Objection.

A. I don't know. I'm not going to get into his mind. I would assume that he would know that the layoffs are in AOL.

Q. Why?

A. Because I would assume that he would gather further information.

Q. From who?

A. From the person sending the

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e-mail. And that in addition AOL was under investigation from some employees for inappropriate accounting activities.

Q. Okay. Let's leave that for a second. Let's stick with the layoffs. So let's start just from the e-mails themselves, okay? Forget follow-up. Just from the e-mails themselves what would Mr. Kiggen know? Or what would you know from reading these e-mails?

A. Some, but not a lot. Not without following up and getting something on the phone from this individual.

Q. Let's probe that. What is the some that you would learn from these?

MR. HALL: Objection.

A. The layoffs were medium term in severity.

Q. What does that mean to you?

A. That means that they were material to the operations of AOL.

Q. Why does medium mean that they were material to the operations of AOL?

MR. HALL: Objection.

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A. If they were minor or a few people it would be significant but medium term in severity means you're laying off people because you don't have enough business or volume.

Q. Where do you get that from?

MR. HALL: Objection.

A. Just my inference from the tone of that.

Q. Have you read Mr. Lorenzo's transcript?

A. No.

Q. Do you know what Mr. Lorenzo said --

A. I'm sorry. I may have read it but I didn't -- I don't know. It's been a long time since I reviewed it.

Q. Do you remember thinking that -- you've reached a conclusion what medium yet. Would it matter what Mr. Lorenzo meant when he wrote medium?

MR. HALL: Objection.

A. I don't know. I don't know. I don't remember.